

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of  
Biennial Regulatory Review 2002  
Report #2 by David Pritchard

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MM Docket No. \_\_\_\_\_

To: The Commission

**COMMENTS**

**I. INTRODUCTION**

Amy Tucci and Elizabeth Strott hereby submit their Comments in response to one of the twelve studies on the current media marketplace released by the Federal Communications Commission (Commission) requesting comment on the “Biennial Regulatory Review 2002 Review of Broadcast Ownership Rules” released on September 12, 2002. We submit that the study, “Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign,” by David Pritchard, falls short of answering the Commission’s question regarding whether diversity is furthered or hindered by cross-owned combinations. It does little to shed light on whether this type of combination has any resulting effect on the Commission’s diversity goal within the media marketplace.

The Commission introduces a number of questions regarding viewpoint diversity in the 2002 Biennial Regulatory Review. Some such questions include whether viewpoint diversity should continue to be a major goal of the Commission’s rulemaking and whether regulatory

requirements are necessary to protect and advance diversity.<sup>1</sup> In addition, the Commission addresses the issue of whether ownership limits are necessary to promote diversity and which types of media constitute “voices” that compete as generators of local news and information.<sup>2</sup> Because of the import potential answers would have as responses to these questions, it would be difficult for a single study to address all of them. The study subject to our comment helps illuminate just a few of these questions. It deals with cross-ownership regulation of television and newspaper combinations, but does not directly answer whether regulation of this media combination continues to be necessary and therefore should further be relaxed. Despite this limited answer, Pritchard’s opinion is expressed in a veiled way, as he subtly addresses whether the Commission should reassess and refocus the questions it asks.

## II. BACKGROUND

Diversity is one of the Commission’s objectives in reviewing the media marketplace.<sup>3</sup> In focusing on diversity, the Commission endorses the Supreme Court’s belief that “the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”<sup>4</sup> The Commission believes that the greater the diversity of viewpoints available to an individual or community, the more opportunities for people, as consumers and citizens, to participate in the different phases of the broadcast industry.<sup>5</sup>

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<sup>1</sup> 2002 Biennial Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 2002 WL 31108252, at ¶ 41-42 (2002) [hereinafter 2002 Biennial Review].

<sup>2</sup> *Id.* at ¶¶ 44, 77.

<sup>3</sup> *F.C.C. v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775, 780 (1978) (quoting *Multiple Ownership of Standard, FM and Television Broadcast Stations*, 45 F.C.C. 1476, 1476-77 (1964)).

<sup>4</sup> *Turner Broadcasting Systems, Inc. v. F.C.C.*, 512 U.S. 622, 663-64 (1994).

<sup>5</sup> 2002 Biennial Review, ¶ 34.

The 2002 Biennial Review discusses viewpoint diversity and states that diversity is essential to “a well-functioning democracy.”<sup>6</sup> Diversity ensures that the public has access to a wide range of diverse opinions and interpretations of information. The Commission’s goal, under the public interest standard of the Telecommunications Act of 1996, is to increase the diversity of viewpoints received by the public by providing participation in the broadcast industry.<sup>7</sup> The Commission fosters viewpoint diversity by focusing on the theory that more owners provide greater viewpoint diversity and are thus more likely to provide divergent viewpoints on controversial issues.<sup>8</sup> The FCC has advanced this diversity objective through ownership restrictions and regulations.<sup>9</sup>

The FCC adopted a rule in 1975, whereby a company that owned a newspaper in a community was prohibited from licensing a broadcast station in the same community. The rule was designed to promote the longstanding FCC goal of diversity. When the FCC first adopted this rule, there were approximately 1,700 daily newspapers, 7,500 radio stations and fewer than 1,000 television stations.<sup>10</sup> The Commission believed that preventing cross-owned newspaper/television combinations would allow for different owners, which, in turn, would provide diverse viewpoints. The Supreme Court upheld this regulation against a First Amendment challenge in *F.C.C. v. National Citizens Committee for Broadcasting*, holding that the Commission’s action furthered the possibility of providing more viewpoint diversity in the media.<sup>11</sup> The Court has determined that media ownership can be limited and regulated to

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<sup>6</sup> *Id.* at ¶ 35.

<sup>7</sup> *F.C.C. v. Nat’l Citizens Comm. for Broad.*, 436 U.S. at 795 (quoting *Associated Press v. U.S.*, 326 U.S. 1, 20 (1945)).

<sup>8</sup> 2002 Biennial Review, ¶ 34.

<sup>9</sup> 47 U.S.C.A. § 533

<sup>10</sup> *Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, FCC 02-249 (rel. Sept. 23, 2002) [hereinafter *NPRM*].

<sup>11</sup> 436 U.S. 775, 796 (1978) [hereinafter *NCCB*].

facilitate the promotion of the First Amendment interests of consumers, as well as to promote diversity.<sup>12</sup>

The Commission has, however, granted waivers to the rule for a number of combinations and grandfathered other media combinations. In 1994, Congress directed the Commission to revisit the regulation and its waiver policies,<sup>13</sup> while the Telecommunications Act of 1996 “made seemingly radical changes in ownership rules” by allowing cross-ownership of certain media combinations.<sup>14</sup> Section 202(h) of the Act directs the Commission to review each of its ownership rules every two years to determine whether the rules remain necessary in the public interest.<sup>15</sup> In 1998, the Commission followed Congress’s direction and evaluated the newspaper/broadcast cross-ownership rule, finding that it continued to foster diversity, thus serving the public interest.<sup>16</sup> The Commission has since begun proceedings on the newspaper/broadcast cross-ownership rule.<sup>17</sup>

Cross-ownership has been a focus of the Commission since the early 1960s, when, in 1964, the FCC adopted a rule prohibiting common ownership of two TV stations.<sup>18</sup> The Commission relaxed the rule in 1999 and allowed such combinations, but continued to ban any combination of the top four-ranked stations.<sup>19</sup> The Commission decided to relax the cross-ownership rule after recognizing the growth of new media and more cable systems and the

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<sup>12</sup> *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622 at 663 (1994).

<sup>13</sup> 107 Stat. 1167 (1993).

<sup>14</sup> Monroe E. Price & John F. Duffy, *Technological Change and Doctrinal Persistence: Telecommunications Reform in Congress and the Court*, 97 Colum. L. Rev. 976, 989 (1997).

<sup>15</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) [hereinafter 1996 Act].

<sup>16</sup> 2002 Biennial Review, ¶ 11.

<sup>17</sup> *Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket No. 01-235, *Newspaper/Radio Cross-Ownership Waiver Policy*, MM Docket No. 96-197, *Order and Notice of Proposed Rule Making*, 16 FCC Rcd 17283 (2001) [hereinafter *Newspaper/Broadcast Cross-Ownership NPRM*].

<sup>18</sup> 2002 Biennial Review, ¶ 74.

<sup>19</sup> *Id.* at ¶ 78.

“efficiencies inherent in joint ownership and operation of both television and radio stations in the same market.”<sup>20</sup>

The Commission also deals with cross-ownership of radio and television stations: in 1970, the Commission adopted a rule prohibiting such cross-ownership, but adopted a waiver policy to allow some combinations in 1989, and then relaxed the rule in 1999.<sup>21</sup> The new rule provided for some level of cross-ownership; it allowed a party to own a television station and up to six radio stations in a market where at least 20 independent voices would remain afterwards, up to four radio stations in any market where at least 10 independent voices would remain post-merger, and one radio station regardless of the number of independent voices in the market.<sup>22</sup>

In adopting and modifying these media cross-ownership rules, the Commission attempts to consistently concentrate on what is in the public’s interest, while continually protecting its diversity goal. As the media market changes, this balancing question is repeatedly and frequently addressed by the Commission. Its efforts to answer this diversity question, however, rarely appear to produce any conclusive results. The Commission-authorized study on newspaper/television cross ownership does little to demonstrate that its policies of promoting diversity actually do so.

### **III. DISCUSSION OF THE PRITCHARD STUDY**

In 2000, author Pritchard studied the diversity of news information in cross-owned newspaper/television combinations in Chicago, Dallas and Milwaukee.<sup>23</sup> The Commission

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<sup>20</sup> *Sinclair Broad. Group, Inc. v. F.C.C.*, 284 F.3d 148, 164 (2002) (quoting *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, FCC 99-209 ¶ 102 (rel. Aug. 6, 1999), 64 Fed.Reg. 50,651 (Sept. 17, 1999) [hereinafter *Local Ownership Order*]).

<sup>21</sup> *Id.* at ¶ 99.

<sup>22</sup> 14 F.C.C. Rcd. 12903 ¶ 9.

<sup>23</sup> David Pritchard, *A Tale of Three Cities: “Diverse and Antagonistic” Information in Situations of Local Newspaper/Broadcast Cross-Ownership*, 54 Fed. Comm. L.J. 31 (2001).

authorized Pritchard to expand his study to more United States cities as part of its 2002 Biennial Regulatory Review of media ownership rules.<sup>24</sup> The study addresses the question of whether commonly owned newspapers and television stations in a community portray the same voice regarding political issues; it analyzed news coverage of the 2000 presidential election by cross-owned newspapers and television stations in ten U.S. cities.<sup>25</sup> The results indicate that five combinations showed that the slant of the television coverage was different than that of the newspaper coverage, while there was no significantly noticeable difference between the cross-owned media in the other five combinations.<sup>26</sup> The author acknowledges that the limited number of cities observed prevents him from making firm conclusions about his findings, but he indicates that common ownership of a television station and a newspaper does not result in a “predictable pattern of news coverage.”<sup>27</sup>

**A. THE STUDY DOES NOT EFFECTIVELY INVESTIGATE  
THE EFFECTS CROSS-OWNED NEWSPAPER/TELEVISION  
COMBINATIONS HAVE ON PROMOTING DIVERSITY**

David Pritchard’s study seeks to determine whether the newspaper/broadcast cross-ownership rule continues to be necessary to protect a diversity of viewpoints by examining the output of such cross-owned combinations. The results of the study, though not comprehensive, do not give any tangible result that aids the Commission in answering this question. Pritchard makes no outward suggestions as to how the Commission should proceed regarding this media

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<sup>24</sup> Pritchard Study at 1. [hereinafter Pritchard Study]

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

regulation. This lack of suggestion, combined with the study's lack of significant result, however, indicate that Pritchard's opinion supports the idea of further regulation relaxation.

The results of the study showed that, in five media combinations, the slant of coverage differed between the newspaper and the broadcast station.<sup>28</sup> There was no significant difference in slant in the other five newspaper-broadcast combinations.<sup>29</sup> In his analysis, Pritchard states that because only ten combinations were observed, no "firm or sweeping conclusions" can be made.<sup>30</sup> In addition, Pritchard notes that the data do not allow him to determine why the combinations either produced similar slants or different slants in their newspapers and television stations.<sup>31</sup>

Pritchard does not make any outward suggestions to the Commission in terms of whether to retain or relax the rule regulating these media combinations. He alludes to a suggestion, however, in stating that he "found no generalized evidence of ownership manipulation of the news in the situations of local cross-ownership...studied."<sup>32</sup> Shortly following this conclusion is a paradoxical statement: he suggests that an explanation of why half of these combinations took similar slants on the coverage is due to a possible "unseen hand of ownership control operated to harmonize the coverage."<sup>33</sup> These inconsistent statements neglect to aid the Commission in its attempt to retrieve insight as to the future of these media regulations.

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<sup>28</sup> Pritchard Study p. 9.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.* at 12.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 12-13

## **B. THE STUDY ENCOUNTERS PROBLEMS IN ITS METHODOLOGY**

In 2001, Pritchard conducted an empirical study concerning viewpoint diversity in cross-owned newspaper-broadcast combinations in Chicago, Dallas, and Milwaukee. His focus at this time was the same as is examined here, coverage of the 2000 presidential campaign. In the Media Ownership Working Group study at issue in this comment, he added to this data set seven cross-owned newspaper-television combinations in six communities in effort to broaden the scope of this inquiry.

The question in both studies was for all intents and purposes the same: did information and opinion about the 2000 presidential campaign in cross-owned media have a coordinated or consistent slant in favor of one major-party candidate or the other?<sup>34</sup> By determining a measurable indicator of “slant,” the study coded all available non-advertising content during the last two weeks prior to Election Day within the data set. The study revealed no significant bias across the combinations at issue.

The question at the heart of this comment, however, is whether or not Pritchard’s methodology was effective. Did his line of attack and choice of relevant data elucidate the FCC’s queries regarding viewpoint diversity or not?

Pritchard’s methodology is superficially open to criticism. There are obvious oversights - lack of a control group against which to measure the slant of cross-owned newspapers and television stations, no mention of minority ownership as playing a potential role in reporting bias, as well as a complete absence of a comparison to other cross-owned media combinations such as radio and television stations etc.

It is entirely possible that the addition of these factors in the examination process of the data set would have yielded a different outcome. It is irrefutable that the conclusion of the study



would have been more informed and comprehensive had Pritchard expanded the scope in these ways. However, it is essential to consider that in Pritchard's opinion, the result of his studies "should surprise no one."<sup>35</sup> It is his firm belief that "the evidence of [this] study...suggests that the prohibition on newspaper/broadcast cross-ownership has outlived its usefulness."<sup>36</sup>

His viewpoint is shared by others, including Kathleen Q. Abernathy, Commissioner of the FCC. In the *Federal Communications Law Journal* she states the following:

"Another area due for review is the newspaper/broadcast cross-ownership rule. Although such rules have been in place a long time, it is not clear to me that, in their current form, they continue to serve the goals they were adopted to promote. In the case of accounting and reporting requirements, these goals include the prevention of cross-subsidies and other anticompetitive conduct; in the case of the broadcast ownership restriction, they are the preservation of competition, localism, and diversity. These goals undoubtedly remain important, but I believe we are overdue in re-examining whether the complex and burdensome regulatory regimes adopted in the last century continue to serve those goals in the twenty-first century."<sup>37</sup>

Thus, an attack on Pritchard's methodology is problematic at best. To say that his study is pondering the wrong question is difficult, in that he is merely pointing out what has been obvious to many for some time- that this type of regulation is superfluous and unfounded. The specifics of his study are less relevant than a cursory reading of it suggests. It is simple to point out that the scope of this investigation was limited or lacking in some way. It does not, however, change the real question of whether or not this restriction advances the FCC's espoused goal of viewpoint diversity.

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<sup>34</sup>Pritchard Study p. 7.

<sup>35</sup> 54 Fed. Comm. L.J. 31, 50.

<sup>36</sup> *Id.* at 51.

<sup>37</sup> 54 Fed. Comm. L.J. 199.

### C. CRITICISM OF PRITCHARD'S LACK OF RECOMMENDATIONS

David Pritchard's study does not suggest recommendations to the Commission regarding whether the Commission should further modify and relax the newspaper/broadcast cross-ownership regulations. He concludes by stating that "cross-owned newspapers and broadcast stations covered the campaign in the way that mainstream American news organizations typically cover political campaigns."<sup>38</sup> Pritchard's neutral stance is demonstrated throughout the study, perhaps as a means to appease the Commission by avoiding any change in its policies. Pritchard's views are much more obvious, however, in his first study, as he summarizes by stating that "evidence does not support the fears of those who claim that common ownership of newspaper and broadcast stations in a community inevitably leads to a narrowing... of the range of news and opinions in the community."<sup>39</sup>

This paradox suggests that Pritchard does not want to definitively tell the Commission what steps to take regarding relaxing regulations. His opinions are evident in his first study, yet he does not conclusively express them in the Commission-authorized study. Though Pritchard neglects to make obvious any recommendations regarding the cross-ownership regulations to the Commission, his opinions are implied throughout the study. He avoids making a bright-line suggestion to the Commission, but this lack of suggestion implies that the present newspaper/broadcast regulations are unnecessary. The results of his study demonstrate his belief about such regulation; therefore, he does not need to outwardly state it to the Commission in decisive words. This lack of recommendation, though implicit in his study, does little, however, to aid the Commission in further addressing the issue of cross-ownership regulations.

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<sup>38</sup> Pritchard Study p. 13.

<sup>39</sup> Pritchard, *supra* note 23, at 48.

#### **IV. CONCLUSION**

The FCC's perennial question about diversity in the media must be tailored. Since the Biennial Review's debut in 1998, the Commission has addressed the issue of whether cross-ownership rules and regulations continue to serve the purpose of protecting and promoting diversity, yet the FCC has taken no action to fully reaffirm the rules, nor has it relaxed them and lifted the prohibitions they present to media owners. Instead, the Commission continues to bring up this question in its biennial reviews. The FCC seems to be in limbo regarding its own opinion of the issue.

The Commission's focus on this diversity question is blurred. It needs to tackle the issue with active measures instead of continually debating it. The Biennial Review was a step towards addressing whether these rules and regulations were necessary in today's media marketplace, however, the three reviews composed since 1998 have simply regurgitated prior thoughts.

The Commission's reliance on David Pritchard's study as one of its primary means to determine whether cross-owned newspaper/television combinations serve its goal of promoting diversity merely allows it to wallow in continued discussion about media cross-ownership rules. In the past six years, the Commission has introduced newspaper/television cross-ownership rules into debate, but has taken no steps towards reconciling the question.

Studies investigating the diversity issue are necessary, but cannot be effectively used if the Commission does not have an agenda.